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comparing the first and second portions of the modulated fluorescence to each other to determine a modulation characteristic of the sample.

REMARKS

Preliminarily, claim 29 has been amended to recite dependence from claim 1, as opposed to now-canceled claim 11. Also, claim 39 has been amended to specifically identify the insertion of the word --comparing-- in place of the deleted word "processing." The inserted word -- comparing-- was inadvertently not underlined in the Amendment of February 16, 2000.

This Supplemental Amendment amends claims 1, 29, 39, 41, 48, 50, 52-56, and 59-61 and is filed pursuant to a telephone interview conducted on March 14, 2000 between the Examiner, co-inventor Dr. Ramez Shehada and the undersigned. In particular, cited documents Alfano et al., Zuckerman and Sevick-Muraca references were discussed and the present claimed invention was further distinguished therefrom.

The Examiner's insights and comments on the cited documents were most appreciated. Applicants' claimed invention departs from the disclosure and teachings of these cited documents in many respects. To begin with, it is emphasized that Applicants' invention processes modulated fluorescence monitored at two different distances from the fluorescing volume. Secondly, Applicants' invention compares such monitored modulated fluorescence to each other to obtain modulation characteristics. In that regard, Applicants' claims define the steps of monitoring at "a first distance" and "a second distance," and Applicants have hereinabove clarified the "comparing" step in all of the currently-rejected base claims (that is, excluding any conditionally-allowed claims) to now specify that the portions of fluorescence (or their representative signals) are compared "to each other" to accomplish the invention.

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As discussed in detail with the Examiner, none of the cited documents disclosed or taught (1) monitoring the modulated fluorescence at two different distances from the fluorescing volume; or (2) the comparison step of Applicants' invention. As such, Zuckerman and Sevick-Muraca were readily dismissed as anticipating or suggesting the claimed invention.

As for Alfano et al, the participants discussed in detail and at length with the Examiner that Alfano et al. merely detect fluorescence from a single location and separate the signal received into two wavelength components which are then processed and compared to respective "standards" to determine whether the cell is benign or malignant. Reference is made to Cols. 5 and 6 of Alfano in this regard. "In characterizing the source of the fluorescence, the intensities of the fluorescence readings are typically compared to two types of distinguishing levels. The first level is a base level, which is used to distinguish fluorescence derived from a malignant or non-malignant cell with fluorescence caused by background. The second level is a discriminator level which is used to distinguish between fluorescence derived from a malignant cell from fluorescence derived from a non-malignant cell." (Column 5, lines 8-16).

There was therefore no mention whatsoever by Alfano et al. of detecting fluorescence at different distances or comparing the readings to each other in order to obtain a modulation characteristic. In fact, it would have made no sense for Alfano et al. to do either because no meaningful or sensible data could have resulted for their intended purpose. Therefore, Alfano et al. could not have taught nor suggested to one of ordinary skill in the art to monitor modulated fluorescence at two different distances and compare the readings to each other to obtain a modulation characteristic. Accordingly, Applicants' claimed subject matter, as further clarified hereinabove to

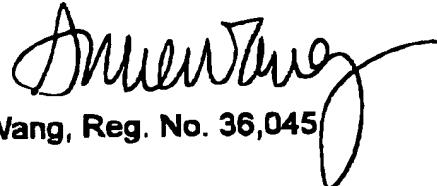
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include a step of comparing of the portions of fluorescence "to each other" is not only novel, but subject matter that would not have been obvious in view of Alfano et al.

Because base claims 1, 39, 41, 48, 50, 52-56, and 59-61 each now recites comparing the portions of the fluorescence "to each other," Applicants submit that these claims, as well as claims depending therefrom, are on in condition for allowance. Moreover, since the Office Action of August 16, 1999 indicated allowance of claims 8-10, 35, 40, 42, 49, 51, 59 and 60, and claims 25-28 depend from allowed claim 8, Applicants submit that the instant case in its entirety is in condition for allowance. The Examiner is invited to telephone the undersigned at (213) 622-7700, extension 114, to resolve any outstanding issues.

Respectfully submitted,

PRETTY, SCHROEDER & POPLAWSKI



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